APPENDIX

United States Court of Appeals, for the Ninth Circuit.
No. 71-1368.

UNITED STATES OF AMERICA, Plaintiff and Appellee, vs. MICHAEL VINCENT CATALANO, Appellant.

[Filed August 6, 1971]

On Appeal from the United States District Court for the Southern District of California.

Before: CHAMBERS and BARNES, Circuit Judges, and BYRNE, Senior District Judge.

Per curiam:

The judgment of conviction for perjury before a grand jury is affirmed.

The point about counsel before the grand jury is well settled adverse to Catalano. Also, we find the testimony was material.

We find other points raised without merit.

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 322 Main Street, Huntington Beach, California 92648, that on SEPTEMBER 20 1971, I served the within PETITION FOR WRIT OF CERTIORARI (October Term, 1971 – No. .....), MICHAEL VINCENT CATALANO v. UNITED STATES OF AMERICA, on the following named parties by depositing THREE COPIES thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

SOLICITOR GENERAL OF THE
UNITED STATES
WASHINGTON, D. C. 20543

UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
301 U. S. COURTHOUSE
SAN DIEGO, CALIFORNIA 92101

I declare under penalty of perjury that the foregoing is true and correct.

Executed on SEPTEMBER 20th 1971, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer

Dean-Standefer Co., 322 Main St., Huntington Beach, Ca.
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No. 71-412

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971

MICHAEL VINCENT CATALANO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App.) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on August 6, 1971, and a petition for rehearing was denied on August 24, 1971. The petition for a writ of certiorari was filed on September 22, 1971. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the grand jury appearance of petitioner was unconstitutional because he was not accompanied by an attorney inside the grand jury room.
2. Whether the trial court properly instructed the jury with respect to (a) the materiality of the testimony set forth in the indictment, (b) the finding necessary to support a perjury conviction, and (c) the requisite intent for perjury.
3. Whether petitioner's conviction is supported by the evidence.

STATUTES INVOLVED

The federal perjury statute, 18 U.S.C. 1621, provides in pertinent part:

> Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, * * * willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2000 or imprisoned not more than five years, or both. * * *

STATEMENT

After a jury trial in the United States District Court for the Southern District of California, peti-

tioner was convicted of perjury before a federal grand jury, in violation of 18 U.S.C. 1621. He was sentenced to three years' imprisonment pursuant to the parole eligibility provisions of 18 U.S.C. 4208(a)(2). The court of appeals affirmed *per curiam* (Pet. App.)

1. On September 18, 1968, petitioner appeared before a federal grand jury in San Diego, California, that was investigating possible violations of fraud by wire, and of interstate travel in furtherance of a fraudulent scheme, in connection with an alleged loss of $100,000 relating to an attempted purchase of platinum (Tr. 62-63).[1] At that time, he gave the following testimony which was charged as perjurious:

> Q. Did you travel to San Diego in connection with Mr. Goldman's platinum transactions?
>
> A. No, sir.
>
> * * * *
>
> Q. And then you got to San Diego, what happened, sir?
>
> A. San Diego?
>
> Q. Yes, sir.
>
> A. San Diego, I rode around with Mr. Goldman.
>
> Q. Where did you go?
>
> A. Got me, I don't know this town.
>
> Q. Well,—
>
> A. I slept most of the time.
>
> Q. Primarily, we are interested in knowing who you met in regard to the platinum transaction.
>
> A. I didn't meet anyone. I was asleep most of the time, like I am now.

[1] "Tr." refers to the transcript of the proceedings in the trial court.